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CHARLES ELMORE CROPLEY

Supreme Court of the United States

OCTOBER TERM, 1945

No. [redacted] 42

No. [redacted] 43

IN THE MATTER

of

AMERICAN FUEL & POWER COMPANY,
INLAND GAS CORPORATION,
KENTUCKY FUEL GAS CORPORATION,
Debtors.

VANSTON BONDHOLDERS PROTECTIVE COMMITTEE,
Petitioner,
against
LOUIS A. GREEN and ROBERT HEILBRUNN, Known in these Proceedings as the Green Committee and Morris Green,
Respondents.

VANSTON BONDHOLDERS PROTECTIVE COMMITTEE,
Petitioner,
against
CARL B. EARLY, DANIEL MATTHEWS, THOMAS MATTHEWS, JACK PATTON and P. G. MEADOR,
Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND SUPPORTING BRIEF

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PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, the Vanston Protective Committee, respectfully shows:

Summary Statement of the Matter Involved

The Circuit Court of Appeals for the Sixth Circuit ruled that overdue coupons on the First Mortgage Bonds of Inland Gas Corporation, a Debtor in proceedings under Chapter X of the Bankruptcy Act, do not bear simple interest, as provided in the Mortgage securing the bonds, from the respective due dates of such coupons. By the terms of the bonds they and the coupons were both payable at the office of the Corporate Trustee in the City of New York, or at the option of the bearer of the bonds or coupons at the office of Continental National Bank & Trust Company in the City of Chicago, State of Illinois (R. 354). Appropriate reference is made in the bonds to the Mortgage for a description of the property mortgaged, the nature and extent of the security and the rights of the bondholders (R. 356). The Mortgage itself provides that upon default the Company shall pay the "total amount then due on principal and interest on all the bonds with interest from the due dates thereof", that the Corporate Trustee may recover judgment therefor and further that any moneys received by the Trustees from the operation or sale of the mortgaged property shall be applied to the payment of the whole amount then due or unpaid upon the bonds "with interest on overdue principal and overdue installments of interest, at the same rates respectively as were borne by the respective bonds" (R. 361-363).

The Indenture was executed in the State of New York by the Debtor, a Delaware corporation, to Chatham-Phenix National Bank and Trust Company and James F. McNamara, Trustees. The principal assets of the Debtor, including the mortgaged property, are located in Kentucky (R. 301). The parent of the Debtor, American Fuel and Power Corporation, was incorporated in Delaware (R. 6). It became a Debtor in 77-B proceedings in that State but these proceedings were later transferred to the District Court in Kentucky (R. 6) and became Chapter X proceedings (R. 346, 348).

Disregarding the State of incorporation of the Debtor and its parent, and looking only (a) to the place of contracting, (b) the two alternative places of performance and (c) the location of the mortgaged property, the transaction in question had substantial contacts with at least three States: New York, Illinois and Kentucky. It is undisputed that under the law both of Illinois and of Kentucky the indenture provision concerning simple interest on overdue coupons is valid. The Circuit Court of Appeals has so held (see opinion in the instant case, footnote 1, R. 383; 151 F. (2d) at 475). Whether the provision is valid under the law of New York, is disputed.

The order of the District Court (R. 348) was made as a consequence of a petition by a First Mortgage Bondholders Committee, requesting a distribution upon the First Mortgage Bonds. The Vanston Committee, the Petitioner herein, also represented First Mortgage Bonds and joined in this application. The Trustee of the Debtor filed a response which raised four questions which the Trustee considered should be decided before any distribution was made. One of these questions related to the interest on overdue interest coupons. The District Court, by FORD, *J.*, had decided that such interest on interest was payable, mainly relying upon the decision of *American Brake Shoe Co.* vs. *Interborough Rapid Transit Co.*, 26 F. Supp. 954 (D. C. S. D. N. Y., 1939, PATTERSON, *J.*), which held such provision valid under New York law.

In reversing the ruling of the District Court and disallowing simple interest on overdue coupons (R. 375, 376), the Circuit Court of Appeals recognized that it was faced with a problem of choice of law and that it could reach the question of the validity of the interest provision only after having ascertained "from what source we should seek controlling jurisprudence". (R. 381; 151 F. (2d), p. 475.)

The Court further recognized and discussed the preliminary question before it, i. e., whether a federal choice of law rule should govern or whether, as in diversity cases the rule should be borrowed from the law of the State of the forum. It stated that this Court had "expressly preter-

mitted the question" of whether the doctrine of *Erie* vs. *Tompkins*, 304 U. S. 64 (1938), applied in a case like the present one (R. 383; 151 F. (2d), p. 475).

The Circuit Court of Appeals nevertheless followed *Erie* vs. *Tompkins*, *supra*, and applied the choice of law rule of the forum State, Kentucky, and under that rule, as understood by the Circuit Court of Appeals, New York law governed the validity of the transaction. It declared that New York law, while difficult to determine, invalidated the interest provision.

The hearing of the District Court for all practical purposes was one to determine the amount of the debt secured by the First Mortgage, the Court having theretofore classified the claims against the bankrupt estate (R. 69-72), and it is conceded that after satisfying prior claims there were sufficient assets in the estate to pay the interest claimed on the First Mortgage Bonds and on the coupons.

Opinions Below

The District Court rendered no opinion but during argument stated the grounds for its decision (R. 148), and thereafter made an order and judgment embodying findings of fact and conclusions of law (R. 348).

The opinion of the Circuit Court of Appeals is reported 151 F. (2d) 470 (1945).

Petitioner presents to this Court, and files herewith, as an exhibit hereto, a duly certified transcript of the printed record in the case as the same appears in the United States Circuit Court of Appeals for the Sixth Circuit. Attached thereto are the proceedings had in that Court, including the Judgments (R. 375, 376, 411) which petitioner seeks to have reviewed insofar as they reversed the judgment of the District Court "with respect to the allowance of interest upon the interest coupons".

Jurisdictional Statement

Jurisdiction to review this case upon writs of certiorari is expressly conferred upon this Court by Judicial Code,

Section 240, as amended (Act of March 3, 1891, c. 517, Sec. 6, 26 Stat. 828; Act of March 3, 1911, c. 231, Sec. 240, 36 Stat. 1157; Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938; U. S. C. Title 28, Sec. 347), and by Bankruptcy Act, Section 24 (c) as amended (Act of June 22, 1938, c. 575, Sec. 1, 52 Stat. 854; U. S. C. Title 11, Sec. 47). A timely petition for rehearing was made to the Circuit Court of Appeals (R. 399, 401) and was denied November 26, 1945 (R. 411).

Questions Presented

1. Whether in determining the rule for the choice of the governing local law concerning the validity of an interest provision in a multi-State contract made by a Debtor in Chapter X Proceedings the bankruptcy court should select the choice of law rule of the forum State.

2. Whether such interest provision is invalid, although it does not violate the public policy of any of the States involved, nor of the United States, and would have been upheld if it had been litigated in the Courts of any of such States.

Reasons Relied on for Granting the Writs

1. The transaction involved in the contract creating the promise for simple interest on overdue coupons was of a multi-State character having substantial and natural contacts with at least three States; Kentucky, New York and Illinois. The Circuit Court of Appeals in choosing the governing law had first to determine which body of law was the proper source for the applicable rule determining such choice and it erroneously held that the law of the State in which the District Court was located determined the choice. This question, whether state law or federal law determines the choice of law in bankruptcy, is of importance and frequently arises. The decisions are confused. *United Construction Company* vs. *Milan*, 124 F. (2d) 670 (C. C. A. 6th, 1942); *Robbins* vs. *Bostian*, 138 F. (2d) 622 (C. C. A. 8th,

1943); *Winkle* vs. *Scott*, 99 F. (2d) 299 (C. C. A. 8th, 1938); *In re Champion Shoe Machinery Co.*, 17 F. Supp. 985 (D. C. E. D. Mo. 1937); *In re Central of Georgia Railway Company*, 58 F. Supp. 807, 811 (D. C. S. D. Ga. 1945) rev'd on other grounds sub. nom. *Liberty Natl. Bk. and Trust Co.* vs. *Bankers Trust Co.*, 150 F. (2d) 453 (C. C. A. 5th, 1945).

The ruling of the Circuit Court of Appeals is based on *Erie* vs. *Tompkins, supra.* This Court, however, has recognized, at least inferentially, the inapplicability of *Erie* vs. *Tompkins, supra,* in bankruptcy cases. See *Sola Electric Co.* vs. *Jefferson Electric Co.*, 317 U. S. 173, 176 (1942). Bankruptcy jurisdiction arises from a constitutional source differing from that of diversity jurisdiction.

The Circuit Court of Appeals should have followed the Federal rule as to the choice of the governing law, which rule is that where the transaction has substantial contacts with several states, especially where the contract is made in one state and is to be performed in another, the parties are presumed to have contracted with reference to the law of that state which would uphold the contractual provisions regarding interest. *Seeman* vs. *Philadelphia Warehouse Company*, 274 U. S. 403 (1927). Accordingly, the law of Illinois or of Kentucky should govern, and under either law the interest provision in question would be upheld. See cases cited in the opinion of the Circuit Court of Appeals, Footnote 1, 151 F. (2d), at page 475 (R. 383).

2. The provision struck down by the Circuit Court of Appeals does not violate the public policy of any of the three States involved. This is unquestioned as to Illinois. In Kentucky the provision is valid and the Kentucky choice of law rule, if properly ascertained, does not compel reference to a foreign law which would strike down such provision. *Commonwealth Farm Loan Company* vs. *Caudle*, 203 Ky. 761, 263 S. W. 24, 26 (1924); *Pensacola & A. R. Company* vs. *Hilton's Trustee*, 147 Ky. 553, 144 S. W. 1077 (1912); *William Glenny Glass Company* vs. *Taylor*, 99 Ky. 24, 34 S. W. 711, 712 (1896).

Even aside from Judge PATTERSON's reasoning in *American Brake Shoe and Foundry Co.* vs. *Interborough Rapid Transit Co., supra,* petitioner contends that a New York Court, in view of the multi-State character of the transaction, would have upheld the provision. *Westchester Mortgage Company* vs. *Grand Rapids and Ionia Railroad Company,* 246 N. Y. 194 (1927).

Specification of Errors to be Urged

1. The Circuit Court of Appeals erred in holding that the rule determining the choice of the governing law regarding the validity of an interest provision in a multi-State contract made by a Debtor in Chapter X Bankruptcy Proceedings should be borrowed from the law of the forum State and should not be a Federal rule.

2. The Circuit Court of Appeals erred in invalidating such provision, since

(a) the provision does not violate the public policy of any of the States involved, or of the United States, and (b) the provision would have been upheld if there had been litigation concerning its validity in the Courts of any of the States involved.

Prayer for Writs

Wherefore, your petitioner respectfully prays that writs of certiorari be issued out of and under the seal of this Court to the United States Circuit Court of Appeals for the Sixth Circuit commanding said last named Court to certify and send to this Honorable Court a full and complete transcript of the record of all proceedings in the within causes and to stand to and abide by such order and direction as to your Honors shall seem meet and the circumstances of the case require and that your petitioner may have such other

and further relief or remedy in the premises as to this Court may seem proper.

Dated: New York, N. Y., February 11, 1946.

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BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI

References to the opinion of the court below, the petition to it for rehearing, the grounds for jurisdiction, questions presented as well as a statement of the case, and specification of errors to be urged, are contained in the petition and will not be repeated.

First. In determining the rule for the choice of the governing law concerning the validity of an interest provision in a multi-State contract made by a debtor in Chapter X Bankruptcy proceedings, a Federal Bankruptcy Court should select the Federal choice of law rule and not borrow such rule from the forum State.

The transaction giving rise to the promise in issue is of a multi-State character and has substantial and natural contacts with at least three States, to wit, Kentucky, New York and Illinois. Hence, assuming that the Circuit Court of Appeals was correct in considering the issue one of "local law", the question is *which* of these three States should furnish the applicable rule of "local law".

There is thus presented a problem of choice of law. Before this problem can be successfully approached it is necessary to determine which body of law is the proper source for the applicable rule determining such choice. More concretely, before the Bankruptcy Court can choose between the local law of Kentucky, New York and Illinois, it has to decide whether the choice of law rule should be a Federal rule or a local rule. The Circuit Court of Appeals held that the law of the State wherein the Bankruptcy Court sits is the proper source for the applicable choice of law rule.

It will be shown below under (a) that the question decided by the Circuit Court of Appeals is of substantial importance in the business of Bankruptcy Courts and that the decision in the case at bar adds to the confusion now existing with respect to this question, and under (b) that the decision of the Circuit Court of Appeals is incorrect.

(a) Under modern conditions the cases are legion wherein securities distributed in numerous States by a Debtor in bankruptcy or reorganization, or other multi-State transactions affecting the bankrupt estate, raise "local law" questions transcending the frontiers of a single State. In each case of this kind the Bankruptcy Court must necessarily resolve questions of choice of law. The confusion which prevails in the Circuit Courts and District Courts, concerning the proper source of the choice of law rule in proceedings under the federal Bankruptcy Act, shows the need for authoritative clarification. The Circuit Court of Appeals for the Sixth Circuit seems to adhere to the view that a Federal District Court, sitting as a Bankruptcy Court, should apply the choice of law rule of the State wherein it sits. See the case at bar, and also *United Construction Company* vs. *Milan*, 124 F. (2d) 670 (C. C. A. 6th, 1942). A different view was taken by the Circuit Court of Appeals for the Eighth Circuit in *Robbins* vs. *Bostian*, 138 F. (2d) 622, 625 (C. C. A. 8th, 1943). In that case, the Court cited *Klaxon Co.* vs. *Stentor Electric Manufacturing Co. Inc.*, 313 U. S. 487 (1941) and *United Construction Company* vs. *Milan, supra*, for the principle that a Bankruptcy Court should make its choice of law in accordance with State law; but after having made this statement the Court did not refer to the choice of law rule of Missouri, where the Bankruptcy Court sat, but to that of Nebraska, where the property in question was located, and after considering the Nebraska choice of law rule the Court held that according to that rule Nebraska law was applicable to the transaction. The choice of law rule of the forum was not even discussed.

In contradistinction to the foregoing cases there are several others in which the Courts, mostly without discussing the point, have held that the choice of law rule to be applied by a Bankruptcy Court should be a federal rule. It was so held in *Winkle* vs. *Scott*, 99 F. (2d) 299, 301 (C. C. A. 8th, 1938), certiorari denied,* 306 U. S. 634 (1939), a case

* The petition for certiorari in that case did not raise the choice of law point.

involving the defense of usury in a multi-State transaction. The opinion of the Circuit Court of Appeals in that case was rendered more than six months after the Supreme Court decided *Erie* vs. *Tompkins*, 304 U. S. 64 (1938). Several United States District Courts have held, both before and after *Erie* vs. *Tompkins*, that the choice of law rule in bankruptcy should be a federal rule. See *in re Champion Shoe Machinery Company*, 17 F. Supp. 985, 986 (D. C. E. D. Mo. 1937), and cases cited; *In re Central of Georgia Railway Company*, 58 F. Supp. 807, 811 (D. C. S. D. Ga., 1945) rev'd on other grounds sub. nom. *Liberty Natl. Bk. and Trust Co.* vs. *Bankers Trust Co.*, 150 F. (2d) 453 (C. C. A. 5th, 1945).

The Supreme Court, while calling attention to the problem in two recent opinions, has expressly reserved the question for future determination. *D'Oench, Duhme & Co., Inc.* vs. *Federal Deposit Insurance Corporation*, 315 U. S. 447, 456, 463-4, 465-7, 471-2 (1942); *McKenzie, Trustee in Bankruptcy* vs. *Irving Trust Company*, 323 U. S. 365, 371, Footnote 2 (1945).

(b) The holding of the Circuit Court of Appeals in the instant case, that the law of the State of the forum furnishes the choice of law rule applicable in bankruptcy, is based on the premise that the rule of *Erie* vs. *Tompkins*, *supra*, and *Klaxon Co.* vs. *Stentor*, *supra*, is applicable in non-diversity cases. This premise is demonstrably incorrect. The opinion in *Klaxon Co.* vs. *Stentor*, *supra*, at pp. 494, 497 expressly states that "in diversity cases" the Federal Courts follow the choice of law rule of the forum. Both *Erie* vs. *Tompkins* and *Klaxon* vs. *Stentor* are based on a statute, the Rules of Decision Act (28 U. S. C. Sec. 725) which is not applicable in bankruptcy. That statute, passed long before the first Bankruptcy Act, differs from the latter in its constitutional origin. Although the Bankruptcy Act uses the existing organization of the Federal District Courts, it is nevertheless fundamental that Courts of Bankruptcy as such are separate and distinct

courts and that they "exercise the powers and jurisdiction in bankruptcy proceedings quite separate and distinct from the powers and jurisdiction inhering as District Courts". 3 Hughes, Federal Practice, Section 1425, quoted with approval in *Hanna* vs. *Brictson Manufacturing Company*, 62 F. (2d) 139, 145 (C. C. A. 8th, 1932). The inapplicability of *Erie* vs. *Tompkins* and its derivatives in non-diversity cases, especially in bankruptcy, has been repeatedly emphasized by this Court. See for example; *Sola Electric Co.* vs. *Jefferson Electric Co.*, 317 U. S. 173, 176 (1942); *Wragg* vs. *Federal Land Bank*, 317 U. S. 325, 328 (1943).

The specific question, whence comes the choice of law rule for a Bankruptcy Court, must be answered in accordance with the express or implied command of the applicable provisions of the Bankruptcy Act (§§ 63, 67, 70, 200). The Constitution authorizes Congress to establish "uniform laws on the subject of bankruptcy throughout the United States" (Art. I, Sec. 8, cl. 4). This has been held to require geographical uniformity, but not to preclude reference to the law of a State with which the transaction in question has a substantial and natural contact. Thus, as to exemptions, this Court upheld a provision referring to the local rule of the State of the debtor's domicile. *Hanover National Bank* vs. *Moyses*, 186 U. S. 181 (1902). Questions of title or dower may be governed by the law of the State where the property is located. See cases collected in 1 Remington on Bankruptcy, 4th Ed., Sections 2 to 6. But no case has been found where the rights of parties under the Bankruptcy Act were made to depend upon the law of a State not because of any substantial and natural contact with the transaction, but merely because it happened to be the State of the forum.

The Bankruptcy Act does not, and constitutionally cannot, refer in any respect to the substantive law of the forum. In Chapter X proceedings the forum is largely a matter of accident. It may be where the corporation has its principal place of business, or its principal assets, or, if the corporation be a subsidiary, either of these two places as

applied to its parent, which may give a third or fourth choice of forum. See *Sections 128 and 129 of the Bankruptcy Act* (U. S. C. Title 11, Sections 528, 529). In the present case the forum could have been Delaware, which is the State of incorporation of the debtor (R. 301), and also the State in which a 77-B proceeding against the parent, American Fuel and Power, was initially brought; the latter proceeding was later moved from the United States District Court in Delaware to the United States District Court in Kentucky (R. 6, 8).

It follows that had the instant case been moved to or initiated in Delaware, or perhaps some other jurisdiction in which the parent might have had its principal assets, then, under the rule adopted by the Circuit Court of Appeals, a different decision could have followed. If the parent had guaranteed the coupons in question, and the bankruptcy proceeding against it had remained in the Delaware Court, one rule as to interest on interest might have been applied against the parent and another rule in the instant case.

In the area of bankruptcy, in which the Constitution itself imposes a rule of *uniformity*, there is no reason to follow the *conformity* rule of the diversity cases. Uniformity, that is independence of the law of the forum, can be accomplished only by a federal choice of law rule.

In the case at bar the federal choice of law rule leads to a result contrary to that reached by the Circuit Court of Appeals. It has been established by a long line of cases in this Court and in the lower federal Courts that where the contract is made in one State and is to be performed in another, the parties are presumed to have contracted with reference to the law of that State which would uphold the contractual provisions regarding interest. See *Seeman* vs. *Philadelphia Warehouse Company*, 274 U. S. 403 (1927) and cases cited; *Cromwell* vs. *County of Sac*, 96 U. S. 51, 60-62 (1877). Under this federal choice of law rule the transaction in question, being concededly good in Illinois,

would have been sustained.* It would have been sustained also because of its substantial contacts with Kentucky, where the contractual provision is likewise valid. See *Seeman* vs. *Philadelphia Warehouse Company, supra,* at 408.

Second. The interest provision is valid since (a) it does not violate the public policy of any of the States involved, nor of the United States, and (b) the provision would have been upheld had there been litigation concerning its validity in the Courts of any of the States involved.

The decision of the Circuit Court of Appeals strikes down a contractual provision which does not violate the public policy of any of the jurisdictions involved. No federal public policy prohibits a promise of simple interest on overdue coupons. See *Town of Genoa* vs. *Woodruff*, 92 U. S. 502 (1875); *Amy* vs. *Dubuque*, 98 U. S. 470, 473 (1878); *Edwards* vs. *Bates County*, 163 U. S. 269, 272 (1896). Nor does any public policy of either Kentucky or Illinois stand in the way of such promise. See *McWilliams* vs. *Northwestern Mutual Life Insurance Co.*, 285 Ky. 192, 147 S. W. (2d) 79 (1940); *Radford* vs. *Southern Mutual Life Insurance Co.*, 12 Bush 434 (1871); *Kentucky Title Company vs. English*, 20 Ky. L. Rep. 2024, 50 S. W. 968 (1899); *Pensacola & A. R. Co.* vs. *Hilton's Trustee*, 147 Ky. 553, 144 S. W. 1077 (1912); *Bowman* vs. *Neeley*, 137 Ill. 433, 27 N. E. 758 (1891); 151 Ill. 37, 37 N. E. 840 (1894); *Abbott* vs. *Stone*, 172 Ill. 634, 50 N. E. 328 (1898).

As to New York law, the Circuit Court of Appeals concluded that *if the whole bond issue had been an intra-State New York transaction,* the promise to pay the interest on overdue coupons would be against public policy.

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* In the Courts below respondents argued that no Inland coupons had been presented in Illinois, but it should be borne in mind that during all the period when these coupons became due the Company was either in Federal Equity Receivership or in 77-B or Chapter X proceedings (R. 303, 173). Moreover there is no doubt that *under the terms of the contract* (R. 355, 360) Illinois is one of the States in which, at the option of the creditor, payment can be demanded. Under the cases cited above, that is sufficient to make Illinois law applicable.

Although this point is not free from doubt, and has caused the Federal Courts considerable difficulty,* it is submitted that according to the weight of authority and reason the New York rule applicable to intra-State New York transactions upholds a promise to pay simple interest on overdue coupons. See *American Brake Shoe & Foundry Co.* vs. *Interborough Rapid Transit Co.*, 26 F. Supp. 954 (D. C. S. D. N. Y., 1939, PATTERSON, *J.*).

But even if the Circuit Court of Appeals were correct in its conclusion that the intra-State New York rule invalidates such a promise, the result reached in the instant case would still be incorrect. That Court failed to recognize that we are here dealing, not with an intra-State New York transaction, but with a *multi-State* transaction which has substantial and natural contacts with other States where the promised interest would be lawful. In such a case the New York law is clearly to the effect that the parties must be presumed to have contracted with reference to the law of such State as would uphold the transaction, and that such intent is not to be thwarted by the courts. See *Westchester Mortgage Co.* vs. *Grand Rapids and Ionia Railroad Co.*, 246 N. Y. 194 (1927), where Judge LEHMAN approvingly cited *Seeman* vs. *Philadelphia Warehouse Company, supra.* See also *Curtis* vs. *Leavitt*, 15 N. Y. 9, 227 (1857). It follows that the particular promise in issue, which was struck down by the Circuit Court of Appeals as allegedly violating New York law, does not contravene the public policy of New York as declared by the courts of that State, and would have been upheld there. Likewise, if the litigation had been brought in a State court either

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*In the Seaboard Air Line Reorganization (*Guaranty Trust Company* vs. *Seaboard Air Line Railway*, Consolidated Cause in Equity No. 214 and Constituent Causes, D. C. E. D. Va., 1943) and in the Wabash Railway Company Reorganization (*The Chase National Bank* vs. *Wabash Railway, Etc.*, No. 12,099 and Constituent Causes, D. C. E. D. Va., 1941) where the mortgages contained a similar covenant for interest on overdue coupons, the courts followed PATTERSON, *J.*, in holding that such covenants were good under New York law. Contra: *In re Wisconsin Central Railway Company*, 63 F. Supp. 151 (D. C., D. Minn. 1945) (appeal pending).

in Illinois or Kentucky, the transaction would have been upheld as not violative of public policy. As to Illinois this is conceded. As to Kentucky the Circuit Court of Appeals held that a Kentucky State Court would have looked to the New York rule, but this is not so. A Kentucky court would have upheld the transaction by looking either to the Kentucky or the Illinois rule covering interest on interest. *Commonwealth Farm Loan Co.* vs. *Caudle*, 203 Ky. 761, 263 S. W. 24, 26 (1924); *William Glenny Glass Co.* vs. *Taylor*, 99 Ky. 24, 34 S. W. 711, 712 (1896); *Pensacola & A. R. Co.* vs. *Hilton's Trustee*, 147 Ky. 553, 144 S. W. 1077 (1912).

The Circuit Court of Appeals, sitting as a Bankruptcy Court, thus took it upon itself, purportedly in deference to "local law", to strike down a promise which does not violate the public policy of New York, or of any other State concerned, and which would have been upheld in State court litigation in each of the States with which the transaction has any substantial and natural contact.

CONCLUSION

It is respectfully submitted that the petition for writs of certiorari in this case should be granted.

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